No. 25-421

IN THE

Supreme Court of the United States

NATIONAL ASSOCIATION FOR GUN RIGHTS, *et al.*,

Petitioners,

v.

NED LAMONT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF CONNECTICUT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTION PRESENTED

Whether the court of appeals properly declined to enjoin Connecticut's assault weapon and LCM laws on the preliminary and undeveloped record before it, when the lower courts did not decide the disputed factual questions Petitioners' claim depends on and Petitioners waived any objection to two independent and alternative grounds to affirm.

PROCEEDINGS RELATED TO THIS CASE

The following proceedings are related to this case within the meaning of Supreme Court Rule 14.1(b)(iii).

- *National Ass'n for Gun Rights v. Lamont*, No. 23-1162 (2d Cir. Aug. 22, 2025)

- *National Ass'n for Gun Rights v. Lamont*, No. 22-cv-118 (D. Conn. Aug 3, 2025)

The following case was related for argument with *National Ass'n for Gun Rights v. Lamont*, No. 23-1162 (2d Cir. Aug. 22, 2025):

- *Grant v. Lamont*, No. 23-1344 (2d Cir. Aug. 22, 2025)

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INTRODUCTION

In 2012, a mass murderer killed 26 children and teachers at Sandy Hook Elementary School in Connecticut. He used an AR-15 style rifle and large capacity magazines, firing 154 rounds in less than five minutes. Connecticut responded by strengthening its restrictions on assault weapons and LCMs while preserving residents' right to self-defense with thousands of other lawful weapons, including many semiautomatic rifles and handguns. Fourteen states and the District of Columbia have enacted comparable laws. Every circuit court to consider these restrictions after *N.Y. State Rifle & Pistol Ass'n v. Bruen, 59*7 U.S. 1 (2022), has upheld them, and this Court has so far denied every petition seeking review. This is not the case to change course.

First, Petitioners exclusively claim that a firearm's common use for lawful purposes answers the *Bruen* analysis and categorically forbids states from restricting it, without any inquiry into whether the restriction falls within the historical tradition of banning "dangerous and unusual weapons." *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). Every circuit court to consider that question has rejected it. So there is no circuit split to resolve, either on analytical frameworks or outcomes.

Second, this is a uniquely poor vehicle to address the question presented. To start, Petitioners do not mention, much less challenge, the lower courts' holdings that they failed to satisfy the balancing of the equities and public interest factors for obtaining a preliminary injunction under *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7 (2008).

Those are alternative and independent grounds to affirm, and Petitioners' waiver precludes this Court from granting relief no matter how it views the merits.

So too does the record Petitioners submitted to support their claims. Even assuming their theory of the Second Amendment were correct, to succeed they had to show, at minimum, that: (1) assault weapons and LCMs are *commonly owned* by Americans; and (2) the subset of Americans who use them commonly do so *for self-defense*. *See Bruen*, 597 U.S. at 29. But the only admissible evidence they properly submitted showed how many assault weapons have been manufactured, not how many Americans own them. And they put in no admissible evidence about *what* Americans use them for. By contrast, Respondents showed that only a small percentage of Americans own assault weapons and LCMs and that they are neither appropriate for nor used in self-defense and are more useful for mass murder. Even if a weapon's "use" or "usefulness" in self-defense are not standalone inquiries—and they are—at the very least those unrefuted facts undercut Petitioners' unsupported assertion that Americans commonly choose them for that purpose.

The preliminary posture of this case, arising on the denial of a preliminary injunction, exacerbates these vehicle problems. Whether assault weapons and LCMs are commonly used for self-defense is at least a disputed question of fact upon which Petitioners' claim depends. But the district court held there was no persuasive evidence that assault weapons or LCMs are commonly used or suitable for that purpose, Pet.App. 135a, and the

court of appeals assumed the answer without deciding it. "This Court is rightly wary of taking cases in an interlocutory posture" like this precisely because it should not decide important constitutional questions when potentially dispositive factual disputes remain unresolved.*Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., concurring). And it need not rush to do so here when several other cases with full factual records and final judgments already are pending before the Court or will be soon. *See, e.g.*, *Barnett v. Raoul,* No. 24-3060 (7th Cir.) (argued Sept. 22, 2025); *Ass'n of N.J. Rifle & Pistol Clubs v. Platkin*, No. 24-2415 (3d Cir.) (argued en banc on October 15, 2025); *Duncan v. Bonta*, No. 25-198 (U.S.S.C) (petition pending).

Third, the court of appeals was right on the merits. The Second Amendment does not bar states from banning particularly dangerous weapons that are neither used nor useful for self-defense just because manufacturers flood the market before states respond. That is especially true when the weapons' unique dangers are brought to the fore by new societal developments nobody predicted when the technology came out, like the current mass shooting epidemic. The court of appeals instead rightly held that historical tradition allows states to respond to and prevent emerging and unprecedented societal harms by banning the weapons causing them. This Court should let that common sense holding stand.

STATEMENT OF THE CASE

I. Connecticut's Assault Weapon and LCM Restrictions

Petitioners bring facial challenges to two of Connecticut's longstanding gun safety laws, General Statutes §§ 53-202a-c and 53-202w, which restrict possession of assault weapons and LCMs. The Connecticut Legislature initially recognized the threat to public safety posed by these particularly dangerous weapons when it adopted Connecticut's original assault weapon ban in 1993. *See* 1993 Conn. Pub. Acts 93-306. Like other laws that have existed for decades at the federal, state, and local level, the 1993 statute prohibited only a small subset of semiautomatic weapons.

Four months after Sandy Hook, Connecticut's Legislature responded with an "Act Concerning Gun Violence Prevention and Children's Safety," which included the challenged statutes. These statutes strengthened Connecticut's existing assault weapon law by prohibiting additional semiautomatic firearms that are on an enumerated list or have certain listed features. They also regulate the possession of LCMs—magazines that can accept more than ten rounds—which render any weapon more dangerous and more lethal. Notwithstanding these laws, Connecticut citizens have always enjoyed robust rights to possess a wide array of firearms including many semiautomatic handguns, rifles, and shotguns. Subject to licensing requirements, Connecticut residents may acquire as many approved firearms and as much ammunition as they want. And the restrictions carve out

exceptions for classes of residents including law enforcement personnel and those who owned the weapons and accessories before the laws' effective date. *See* Conn. Gen. Stat. §§ 53-202d(a), 53-202b(b)(1).

Connecticut's assault weapon restrictions apply to selective-fire[1] firearms; types of semiautomatic rifles, pistols, and shotguns with combat-style features; and 49 specific makes of assault rifles enumerated by name or style. Of these 49 assault rifles, 20 are variants of the AK-47; 13 are variants of the AR-15/M-16; and 3 are variants of the HK 91 or FN type. The statutes also ban certain semiautomatic pistols. Of the 22 assault pistols listed in the statutes, 6 are variants of the AK-47 and 7 are variants of the M-16/AR-15. And Connecticut restricts some types of shotguns, including the Street Sweeper and Striker 12 revolving cylinder shotguns and the Izhmash Saiga 12, a semi-automatic shotgun based on the AK design with modifications to accept shotgun shells. Conn. Gen. Stat. § 53-202a(1).

The statutes also restrict weapons based on a list of features that may be manufactured already attached to a weapon or manufactured separately and attached to enhance a firearm's lethality. These prohibitions include semiautomatic, centerfire rifles that can accept a detachable magazine and have one of the following features: telescoping stocks, forward

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[1] A selective-fire weapon is one with the capability to be adjusted to fire in different modes, like semi-automatic, fully automatic, or burst mode. C.A.App. 387.

pistol grips, shrouds, flash suppressors, or grenade launchers. Conn. Gen. Stat. § 53-202(a)(1)(E)(i).

The prohibited weapons, including the AR-15 style weapons Petitioners focus on, are "essentially civilian versions of military weapons used by armed forces around the world." C.A.App. 329. Designed in response to the U.S. military's request for an improved infantry weapon, AR-15s were designed as battlefield weapons capable "of placing a large volume of fire" on "multiple or moving targets." C.A.App. 427. Because of its "phenomenal lethality" the Army adopted the AR-15 as its standard-issue rifle, rebranding it as the M-16 as a selective fire rifle. The military specifically instructs troops that semi-automatic fire, rather than fully automatic fire, is the more efficient and "devastatingly accurate" manner to use the M-16. C.A.App. 242. In other words, the lack of fully automatic features on an AR-15 style rifle is yet another feature that renders it unusually dangerous—not less so. The AR-15 chambers .223 caliber rounds "designed to mushroom and fragment" in a victim's body, boring a hole in human tissue that one trauma surgeon described as less like a nail puncture than like being shot by "a Coke can." *Id.* When equipped with LCMs, AR-15s become even more lethal: it takes "as little as five seconds" for a semiautomatic rifle like the AR-15 to empty a thirty-round LCM. C.A.App. 926.

Connecticut's LCM restriction defines an LCM as a detachable "magazine, box, drum, tube, belt, feed strip, or other ammunition feeding device" that can hold more than ten rounds of ammunition. Conn. Gen. Stat. § 53-202w(a)(1). With LCMs, shooters can rapidly fire without having to stop and

reload; pauses that can give victims time to escape, and law enforcement time to intervene. C.A.App. 252-253. Most semiautomatic firearms can accept magazines with a capacity of ten rounds or fewer and thus can still function without an LCM.

II. Proceedings Below

Petitioners National Association for Gun Rights ("NAGR") and Toni Theresa Spera Flanigan brought this action and promptly moved for a preliminary injunction. C.A.App. 71. But they provided virtually no evidence to support it, submitting only two cursory fact witness declarations from the individual plaintiff and an NAGR representative and one sparse declaration from a firearm-industry funded expert.

None of Petitioners' declarations addressed the two factual questions their claim minimally depends on: whether Americans: (1) commonly own assault weapons and LCMs; (2) for the purpose of self-defense. As to the first question, one declaration had a single paragraph describing how many AR-15s have supposedly been manufactured in thirty years and how many LCMs are supposedly possessed by American citizens, but not how many individual Americans own or possess either. C.A.App. 102-107. And the declarations had no evidence on the second question about why Americans own these weapons, much less evidence showing that Americans subjectively choose them for self-defense. Nor did they submit evidence showing these weapons are appropriate or ever used for self-defense in practice.

Petitioners attempted to remedy these failures by focusing in reply on an inadmissible hearsay survey of unidentified, supposed gun owners claiming their intended uses for different types of weapons. *See* C.A.App. 999 (citing William English, *2021 National Firearms Survey* (May 13, 2022)). The survey was not presented as evidence via an expert witness but merely cited in passing. But even that inadmissible, unauthenticated survey did not discuss actual uses of assault weapons or LCMs, focusing instead on "general common use of firearms broadly". Pet.App. 122a.

By contrast, Respondents submitted a mountain of admissible evidence—nearly one thousand pages, including eight expert declarations—on these topics and more. Their evidence showed that assault weapons are not commonly owned—only about 2% of the American population legally owns them, and even less of the Connecticut population. C.A.App. 280, 291; 199. It also showed that assault weapons are not used or useful for self-defense: of the 2,714 incidents in the Heritage Foundation's "Defensive Gun Uses" database as of October 2022, only 2% involved assault weapons in any way, fired or not. C.A.App. 800. Similarly for LCMs, the evidence showed that only about 1% of Connecticut citizens legally own them. C.A.App. 199. It showed more than ten rounds are almost never needed for self-defense—of the over 700 incidents in the NRA Armed Citizen database, there were only *2 incidents* in which a person fired more than 10 bullets in self-defense. C.A.App. 791-796. And a more comprehensive search of over 4,000 incidents of self-defense in or around the home showed the average number of shots fired in such

situations was fewer than three, and no one in the larger sample fired more than ten shots. *Id.* When it comes to usefulness, their evidence showed law enforcement and military experts report assault weapons are just not suitable for self-defense—they are less maneuverable in tight areas like a home, are less likely to hit a target in close quarters than other weapons, and more likely to penetrate walls, causing collateral damage. C.A.App. 258.

And beyond the "common use" question central to Petitioners' claim, Respondents presented overwhelming and unrebutted evidence that assault weapons and LCMs are unusually dangerous weapons most useful for unlawful purposes like mass shootings and killing law enforcement. For example, their evidence showed that "[a]ssault weapons and/or high-capacity magazines were used in all fifteen gun massacres since 2015 in which at least six were killed (other than the shooter)." C.A.App. 228. It also showed that assault weapons and LCMs—especially in combination—are particularly lethal and dangerous: when used together, they result in more shots fired, persons wounded, and wounds per victim. C.A.App 809. In mass shootings, assault weapons paired with LCMs "cause an average of 299 percent more deaths and injuries than regular firearms, and 41 percent more than semiautomatic handguns." C.A.App. 930. Considering all shootings nationally between 1982 and 2022 where more than four people were killed in a public place, an average of 36 fatalities or injuries resulted when an assault weapon was used, versus ten otherwise. *Id.*

After showing the challenged laws address a societal concern not present at the time of the Founding—an epidemic of mass murder perpetrated with technology that proliferated in the late twentieth century—respondents included a robust analysis of historically analogous regulations, discussed and presented by three historical experts. Analogous regulations on newly emerging, particularly dangerous weapons included pre-colonial and early colonial laws banning weapons like clubs, certain knives, launcegays, crossbows, handguns, trap guns, percussion cap guns, hagbuts, and demy hakes. *See, e.g.*, 7 Rich. 2, ch. 13 (1383); 33 Hen. 8, ch. 6 §§ 1, 18 (1541); 1763-1775 N.J. Laws 346, ch. 539, § 10 (1771). And they included later "ubiquitous" bans on carry and possession of dirk and Bowie knives which, like assault weapons, were especially lethal and responsible for "an alarming proportion of the era's murders and serious assaults." Pet.App. 53a. The evidence also included Twentieth century analogues similarly banning precursors to today's assault weapons—Tommy Guns and short-barreled shotguns. Pet.App. 58a-59a. Like these analogues, Connecticut's laws respond to a proliferation of particularly dangerous technology, optimized for and used in mass murder and posing a unique threat to public safety.

The district court denied the injunction because Petitioners were unlikely to succeed on the merits. Pet.App. 76a-77a. First, the court determined *as a factual matter* that the record before it at this preliminary stage did not support the conclusion "that the specific firearms [Petitioners] seek to use and possess are in common use for self-defense, that the people possessing them

are typically law-abiding citizens, and that the purposes for which the firearms are typically possessed are lawful ones." Pet.App. 117a. Second, the court found that the challenged regulations are consistent with our country's historical tradition of prohibiting unusually dangerous weapons. Pet.App. 147a.

The court of appeals affirmed in a joint decision resolving this case and *Grant v. Lamont*, No. 23-1344 (2d Cir.). As for the first *Winter* factor—likelihood of success on the merits—the court assumed without deciding that the challenged weapons are "presumptively entitled to Constitutional protection" and proceeded to *Bruen's* second step, where it analyzed our country's historical tradition of firearm regulation. Pet.App. 35a. In doing so, the court of appeals specifically declined to address several questions Petitioners' claim depends on, including whether assault weapons or LCMs are "Arms," whether they are in common use for self-defense, and what types of evidence the "common use" test requires. Pet.App. 35a. The court instead held that, even assuming all those factual and legal issues go in Petitioners' favor, historical "regulations that singled out the unusually dangerous weapons of their day are 'relevantly similar' to the challenged statutes" and support the regulations here. Pet.App. 36a, 51a. In particular, the court held there is "a longstanding tradition of restricting novel weapons that are particularly suited for criminal violence—a tradition that was 'liquidate[d] and settle[d]' by 'a regular course of practice' of regulating such weapons throughout our history." Pet.App. 52a (citing *Bruen*, 597 U.S. at 35-36).

But the Court did not just affirm because Petitioners failed to establish a likelihood of success on the merits. It also addressed the other *Winter* factors—which Petitioners barely addressed—and found Petitioners fell short of their burden there too, especially on the balancing of the equities and public interest prongs. Pet.App. 61a-66a. So it affirmed the district court's denial of preliminary injunctive relief on those separate and independent grounds. Pet.App. 66a. This petition followed.

REASONS FOR DENYING THE PETITION

I. There Is No Split of Authority to Resolve.

No split of authority exists to justify this Court's review here, whether on legal tests or outcomes. To the contrary, every circuit court to address the validity of laws like Connecticut's since *Bruen* has upheld them. And every circuit court to have considered the specific claim Petitioners present—that common use for lawful purposes is dispositive—has likewise rejected it. There is no reason for this Court to review this unanimity among the lower courts. To the extent Petitioners seek to avoid that conclusion by referencing differences on other analytical points the court of appeals did not address or decide, those purported "splits" are irrelevant and not a basis for granting *this* petition.

A. The Circuit Courts unanimously reject Petitioners' claim.

Every federal court of appeals to consider an LCM or assault weapon ban since *Bruen* has upheld it. And none have agreed with Petitioners' specific contention that common use for lawful purposes is dispositive after *Bruen*. This Court should deny the petition for that reason alone.

First, there is no circuit split on outcomes. To the contrary, the circuit courts are unanimous in upholding LCM laws or declining to enjoin them at the preliminary injunction stage because the challengers were unlikely to succeed on the merits. *See Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025), *petition for cert. filed,* No. 25-198; *Ocean State Tactical, LLC, et al. v. Rhode Island*, 95 F.4th 38, 52, 54 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 2771 (2025); *Capen v. Campbell*, 134 F.4th 660 (1st Cir. 2025); *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1197 (7th Cir. 2023), *cert. denied sub nom.*, *Harrel v. Raoul*, 144 S. Ct. 2491 (2024); *see also Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 197 (3d Cir. 2024) (finding challengers failed to meet the other preliminary injunction factors and underscoring that "[a] preliminary injunction is not a shortcut to the merits"), *cert. denied sub nom.*, *Gray v. Jennings,* No. 24-309 (2025). All these courts agree on the overarching issue presented here: LCM restrictions are constitutional.

The same is true for assault weapons: No circuit court to consider the issue has enjoined an assault weapon ban after *Bruen*. *See Capen*, 134

F.4th at 660; *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc), *cert. denied sub nom., Snope v. Brown*, 145 S. Ct. 1534 (2025); *Bevis*, 85 F.4th at 1175; *Viramontes, Viramontes v. Cook Cnty.*, No. 24-1437, 2025 U.S. App. LEXIS 13331 (7th Cir. June 2, 2025), *petition for cert. filed*, No. 25-238; *Hanson v. Smith*, 120 F.4th 223 (D.C. Cir. 2024). Neither has any state court of final review. *See State v. Gator's Custom Guns, Inc.* 568 P.3d 278 (Wash. 2025), *petition for cert. filed*, No. 25-153.

Second, and more importantly, every circuit court to consider the specific claim presented here—that a firearm's common use for lawful purposes is dispositive—has either explicitly or implicitly rejected it.

Like the Second Circuit, the First Circuit has assumed without deciding that LCMs and AR-15s are presumptively protected because they are commonly owned for lawful purposes, but nevertheless upheld similar bans because they are consistent with history and tradition. *Ocean State Tactical,* 95 F.4th at 43; *Capen*, 134 F.4th at 667. The Fourth and D.C. Circuits have confronted and rejected the question more directly, squarely holding that common use is not dispositive. *Bianchi*, 111 F.4th at 460 ("the Supreme Court did not posit a weapon's common use is conclusive evidence that it cannot be banned");*Hanson*, 120 F.4th at 233 (rejecting argument that "common use renders any restriction of that arm unconstitutional" and holding that "Bruen itself precludes this argument" because of the historical inquiry enumerated therein). And while the Seventh and Ninth Circuits have held that LCMs or assault weapons are not protected for

various reasons—a conclusion the court of appeals did *not* reach here—they too have held that common use is not dispositive and that such laws would also be upheld under *Bruen's* historical analogue analysis. *See Bevis*, 85 F.4th 1195, 1197-98; *Duncan*, 133 F.4th at 860.

Third, although Petitioners do not question it in their petition, there is no split on the court of appeals' historical analogue analysis either. Every court to address step two of the *Bruen* test as to LCM and assault weapon restrictions has found that history and tradition support them. *See Hanson*, 120 F.4th at 242-43 (recognizing the tradition of regulating "weapons that are particularly capable of unprecedented lethality"); *Ocean State Tactical*, 95 F.4th at 46 (recognizing the tradition of regulating dangerous aspects of weapons "once their popularity in the hands of murderers became apparent"); *Duncan*, 133 F.4th at 869, 874 (identifying tradition of "laws to protect innocent persons from especially dangerous uses of weapons once those perils have become clear"); Capen, 134 F.4th at 660 (tradition of "protect[ing] the public from the danger caused by weapons that create a particular public safety threat"); *Bianchi*, 111 F.4th at 462("[t]he statute is one of many in a storied tradition of legislatures perceiving threats posed by excessively dangerous weapons and regulating commensurately"); *Bevis*, 85 F.4th at 1199 (finding a "long-standing tradition of regulating the especially dangerous weapons of the time").

B. The purported "conflicts" Petitioners identify are not relevant or outcome determinative.

Because no split exists on the issues the court of appeals decided, Petitioners resort to identifying purported "conflicts" on other issues having nothing to do with this case or anything the court of appeals said in its opinion. In their view, this Court should "provide guidance" on these issues even though they cannot make a difference for these Petitioners. Pet. 10-16. But this Court does not "decide the merits of possible constitutional challenges that could be brought by other plaintiffs" and are "not necessary to resolve th[is] case," especially on constitutional questions to which the Court "seek[s] to avoid even *non*advisory opinions." *Moody v. NetChoice*, *LLC*, 603 U.S. 707, 755 (2024) (Barrett, J., concurring) (emphasis in original) (quoting *Chicago v. Morales*, 527 U.S. 41, 77 (1999) (Scalia, J., dissenting)).

First, Petitioners claim the circuits differ on whether assault weapons and LCMs are arms; where the common use analysis fits in the *Bruen* analytical framework; and what exactly the common use inquiry entails. Pet. 10-15. None of that is relevant here, as the court of appeals *assumed* that assault weapons and LCMs are commonly used arms protected by the Second Amendment and specifically declined to address these issues. Pet.App. 35a. So there is no basis to resolve these purported splits here. Stephen M. Shapiro, et al., SUPREME COURT PRACTICE 249 (10th ed. 2013) (the Court does not grant petitions to resolve questions a lower court did not decide and that cannot change the outcome of the case).

Second, even if they were relevant, these purported "disagreements" are at best differences in reasoning, not outcomes. But the question before this Court on review is whether "the *judgment* [was] correct, not the *ground* on which the judgment professes to proceed." *Camreta v. Greene*, 563 U.S. 692, 717 (2011) (Kennedy, J. dissenting) (quoting *M'Clung v. Silliman*, 19 U.S. 598 (1821)). There is no split on that question for the reasons discussed.

II. This is a Uniquely Poor Vehicle to Address the Question Presented.

Even if a relevant split of authority existed, the Court cannot resolve it here because Petitioners have waived any challenge to two alternative and independent grounds to affirm. Even if that were not so, the Court cannot grant Petitioners relief on the preliminary and inadequate record they made below, which at best leaves a host of disputed and potentially dispositive factual questions unresolved. If the Court is inclined to address this issue, it should do so in one of the many pending cases with full factual records that have proceeded to final judgment.

A. Petitioners waived any challenge to the lower courts' alternative and independent grounds for affirmance.

This Court's rules unambiguously provide that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." Sup. Ct. R. 14.1(a); *see Travelers Cas. & Sur. Co. of Am. v. PG&E,* 549 U.S. 443, 455 n.5 (2007)

(declining to review question not fairly included in the question presented); *Parke v. Raley*, 506 U.S. 20, 28 (1992) (similar). This principle alone should be dispositive here.

The only question presented or "fairly included" in the petition is the merits of Petitioners' Second Amendment claim. But this case arises from the denial of a preliminary injunction, not a final judgment on the merits. And to get a preliminary injunction Petitioners had to meet each of the four factors identified in *Winter*, 555 U.S. at 20. The court of appeals held they did not meet at least two of the non-merits prongs—balancing of the equities and public interest—and independently affirmed the district court's denial of relief on each ground. Pet.App. 66a. Petitioners do not mention or challenge either holding in their petition, precluding this Court from considering them or granting relief in a subsequent appeal. The Court should deny the petition on that basis alone. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (per curiam) (the Court will not review an issue when "it is not clear that [its] resolution of [that issue] will make any difference" to the petitioner).

Regardless, even if these issues were preserved, the Court still could not grant relief because there is no question Petitioners failed to meet their burden on both factors. They barely tried, arguing instead that resolution of the merits factor in their favor effectively does away with the other three *Winter* factors. Pet.App. 61a. But "[a] preliminary injunction is not a shortcut to the merits." *Del. State Sportsmen's Ass'n,* 108 F.4th at 197. The court of appeals rightly rejected that

remarkable and unsupported claim, and Petitioners present no argument why that was wrong. Nor could they, as this Court has never held that to be the case, even in cases involving alleged violations of constitutional rights. Rather, a preliminary injunction is "'an extraordinary remedy never awarded as of right,'" and it "does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (quoting *Winter*, 555 U.S. at 24). The default rule instead remains "that a plaintiff seeking a preliminary injunction must make a clear showing" on *all* the *Winter* factors. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (quoting *Winter*, 555 U.S. at 20, 22); *see NetChoice, LLC v. Fitch*, 145 S. Ct. 2658, 2658 (2025) (Kavanaugh, J. concurring) (even where a law is likely unconstitutional, balance of harms and equities sufficient to deny application for interim relief). Petitioners identify no legal authority suggesting otherwise.

B. The factual record at this preliminary stage bars relief.

Petitioners' theory of the Second Amendment is that a firearm's common use for lawful purposes by itself answers the *Bruen* analysis and precludes further inquiry into whether the restriction fits within any historical tradition of firearm regulation, including, but not limited to, the long tradition of banning "dangerous and unusual weapons." *Heller*, 554 U.S. at 627. That is not the standard after *Bruen*. But even if it were, the Court could not rule for Petitioners because there is no evidence or

factual findings showing that Connecticut's laws fail under that standard.

At minimum, for Petitioners to succeed on their claim the record would have to show that: (1) assault weapons and LCMs are *commonly owned* by Americans; and (2) they are commonly owned *for self-defense*. *See Bruen*, 597 U.S. at 29. There also would have to be evidence that the weapons are both used and useful for self-defense, as the Second Amendment does not bar states from restricting weapons with no functional relationship to the "core" right the amendment seeks to protect. *See Heller*, 554 U.S. at 630; *see also Bruen*, 597 U.S. at 29 (reemphasizing that "individual self-defense is the *central component* of the Second Amendment right," and that "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are *central* considerations when engaging in an analogical inquiry") (citations and quotation marks omitted; emphasis in original). But even if "use" and "usefulness" are not standalone inquiries, *see Snope*, 145 S. Ct. at 1537-38 (Thomas J., dissenting), the undisputed fact that a particular weapon is not useful for self-defense and is never actually used for that purpose at the very least informs the inquiry into whether Americans subjectively choose it for that purpose.

The record here does not support the conclusion that Americans commonly own assault weapons or LCMs, much less that they subjectively do so for self-defense. If anything, the record shows the opposite.

First, the record does not even show that Americans commonly own assault weapons or LCMs. Petitioners submitted only two fact witness declarations—approximately one page each—from the individual plaintiff and an NAGR representative, neither of which addressed ownership rates. They also submitted a declaration from a purported expert, but it included only a single paragraph discussing how many AR-15s have supposedly been *manufactured* in thirty years and how many LCMs are *possessed* in total by American citizens. C.A.App. 102. And Petitioners' citation to the inadmissible English survey only further confounds ownership: while the survey purports to show how many supposed gun owners have AR-15 style rifles, it estimates ownership numbers nationwide based on whether the respondents have *ever* owned such a weapon. C.A.App. 90-91. But the relevant metric for this inquiry is current ownership rates—*i.e.,* how many individual Americans choose to own these weapons—not how many "gun owners" ever had one or how many have been manufactured or are in circulation. Unlike Petitioners' evidence, Respondents showed that only a tiny percentage of Americans own these weapons today—less than 2% nationally for assault weapons and less than 1% statewide for LCMs. C.A.App. 199-292.

Second, and more importantly, Petitioners submitted no admissible evidence about *why* Americans choose to own assault weapons or LCMs, much less showing that the small subset of Americans who own them commonly do so for self-defense. The only thing touching on that point that could even be charitably referred to as "evidence" was their citation to the abstract of the English

survey. C.A.App. 90-91. This inadmissible survey discussed the purported motivations of some gunowners for owning different categories of weapons. C.A.App. 999. This oft-cited survey of unidentified gun owners is based on hearsay, is neither published nor peer reviewed, *see* C.A.App. 90-91,[2] and courts have refused to consider it in similar cases. *See, e.g.*, *Barnett v. Raoul*, 756 F.Supp.3d 564, 628-629. But even if it were admissible, the district court rightly found it, like the Petitioners' other evidence, unhelpful because it is "directed to general common use of firearms broadly" and not uses of "the *specific* assault weapons enumerated" in the challenged statutes. Pet.App.122a (emphasis in original). Further, the survey provides *no evidence* about *actual use* of assault weapons or LCMs, containing only self-reported intended uses of categories of firearms.

By contrast, Respondents again submitted a mountain of unrebutted evidence showing that assault weapons and LCMs are neither used nor useful for self-defense, undercutting any notion that

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[2] To the extent Petitioners improperly attempt to smuggle other studies and articles on this topic into their petition, they were not before the district court or the court of appeals and this Court cannot properly consider them for purposes of this petition or any subsequent appeal. *See* Pet. at 8-9 (citing Emily Guskin, Aadit Tambe, and Jon Gerberg, The Washington Post, *Why do Americans own AR-15s?* (November 2, 2023) (available at bit.ly/3G0vbG9); *NSSF Releases Most Recent Firearm Production Figures*, NSSF (Jan. 15, 2025), https://perma.cc/HJQ9-MHLV.; Cong. Rsch. Svc., *House-Passed Assault Weapons Ban* of 2022 (H.R. 1808), at 2 (Aug. 4, 2022), bit.ly/3ZsvpwY; and Nat'l Shooting Sports Found., Detachable Magazine Report, 1990-2021 (2024), perma.cc/4VXU-DJWA.).

Americans choose them for that purpose. For instance, they showed that using an assault weapon or firing more than 10 rounds in self-defense is not advisable and almost never happens. The evidence showed "the vast majority of the time that an individual in the United States is confronted by violent crime, they do not use a gun for self-defense," and that between 2007-2011, 99.2 percent of victims of violent crimes did not defend with a gun at all. C.A. App. 256. Respondents' statistician showed LCMs similarly were not necessary for self-defense, showing in 97.3% of all national incidents involving defensive firearms use individuals fire 5 shots or fewer with the average being 2.34 shots. C.A. App. 780-797.

As for assault weapons, of the 2,714 incidents in the Heritage Foundation's "Defensive Gun Uses" database as of October 2022, only 2% involved assault weapons, discharged or not. C.A.App. 800. And of all 406 U.S. "active shooter" incidents between January 1, 2000 and December 21, 2021, "only one . . . involved an armed civilian intervening with an assault weapon." C.A.App. 290. An unsurprising result—the evidence showed they are physically unsuited to typical self-defense scenarios. They are significantly heavier and longer than typical handguns, making them less concealable, more difficult to use, and less readily accessible, particularly for an inexperienced user. C.A.App. 258. They are remarkably lethal against large numbers at range—but most self-defense, especially in the home, occurs "within a distance of three yards." C.A.App. 260. And because they are so overpowered, assault weapons pose a terrifying risk to bystanders, since rounds from assault weapons

can easily penetrate most materials used in standard home construction, car doors, and similar materials. C.A.App. 258. Indeed, the evidence showed that gun manufacturers do not even advertise them for self-defense, instead marketing them as weapons of mass aggression. *See* C.A.App. 240 (advertisement that owning an assault rifle will "bring out the warrior in you"); C.A.App. 961.

C. Petitioners' claim depends on disputed questions of fact.

The preliminary posture of this case exacerbates these evidentiary deficiencies. Whether Petitioners created an adequate record or not, at the very least the parties hotly contest these disputed and potentially dispositive questions about ownership and use (among many others). And they have not yet had the opportunity to challenge each other's evidence through discovery, depositions, or trial. These "crucible[s] of adversarial testing" "could yield insights (or reveal pitfalls)" that this Court should be able to consider if it decides to review questions like those posed here. *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

More importantly, all these fact questions remain unresolved by the lower courts. Pet.App. 135a (noting that petitioners did not meet their burden, declining to definitively resolve the factual disputes on this record); *see also* Pet.App. 35a (declining to decide these questions). And they are potentially dispositive, as a finding that assault weapons and LCMs are not commonly used for self-

defense would obviate the need for this Court to resolve the constitutional question entirely.

The Court would be better served addressing these issues in a case where these questions have been conclusively resolved through a final judgment on a full factual record. *See Harrel,* 144 S. Ct. at 2491-2493 (Thomas, J.) (noting that "[t]his Court is rightly wary of taking cases in an interlocutory posture," but that it should "review . . . *once the cases reach final judgment*") (emphasis added); *Snope*, 145 S. Ct. at 1535 (Kavanaugh, J.) (noting that additional decisions from circuit courts will assist this Court's decision-making); *Spears v. United States*, 555 U.S. 261, 270 (2009) (Roberts, C.J., dissenting). There are several such cases already pending before the Court, with many more sure to arrive soon. *See, e.g.*, *Gator's Custom Guns, Inc.,* 568 P.3d at 278, *petition for cert. filed*, 25-153 (LCMs); *Duncan*, 133 F.4th at 852, *petition for cert. filed*, 25-198 (LCMs); *ANJRPC,* No. 24-2415 (3d Cir.) (assault weapons, argued en banc on October 15, 2025); *Barnett,* No. 24-3060 (7th Cir.) (assault weapons, argued Sept. 22, 2025). Each of these cases went to final judgment on full and contested evidentiary records addressing the common ownership and use questions Petitioners declined to address here. *See, e.g.*, *Duncan*, 133 F.4th at 859-866; *Barnett*, 756 F. Supp. 3d at 620-25, 652; *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Platkin, 74*2 F. Supp. 3d 421, 433 (D.N.J. 2024). All would be better vehicles for review than this.[3]

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[3] *See also, e.g.*, *Miller v. Bonta*, No. 23-2979 (9th Cir.) (argued Jan. 24, 2024); *Vt. Fed'n of Sportsmen's Clubs v. Birmingham*, No. 24-2026 (2d Cir.); *Fitz v. Rosenblum,* Nos. 23-35478, 23-

III. The Decision Below is Correct.

Petitioners' merits arguments amount to little more than error correction. But that "is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari." *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring) (citing S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice §5.12(c)(3), p. 352 (10th ed. 2013)). And here the court of appeals rightly held that Petitioners are not entitled to extraordinary preliminary relief on this record, both on the merits and the equitable *Winter* factors Petitioners decline to address. Petitioners' contrary arguments lack merit.

To start, after assuming without deciding that assault weapons and LCMs are presumptively protected by the Second Amendment, the court of appeals addressed *Bruen's* historical analogue inquiry. It determined that the challenged laws are likely constitutional at that step because they are "relevantly similar" to "historical antecedents that imposed targeted restrictions on unusually dangerous weapons of an offensive character—dirk and Bowie knives, as well as machine guns and submachine guns—after they were used by a single perpetrator to kill multiple people at one time or to inflict terror in communities." Pet.App. 37a; *see also* Pet.App. 52a (quoting *Bruen*, 597 U.S. at 35-36)

35479, 23-35539, 23-35540 (9th Cir.); *Rupp v. Bonta*, No. 24-2583 (9th Cir.); *Oregon Firearms Fed. v. Brown*, No. 23-35540 (9th Cir.); *Eyre v. Rosenblum*, No. 23-35539 (9th Cir.); *Banta v. Ferguson*, No. 24-6537 (9th Cir).

(discussing "longstanding tradition of restricting novel weapons that are particularly suited for criminal violence—a tradition that was 'liquidate[d] and settle[d]' by 'a regular course of practice" of regulating such weapons throughout our history). The court of appeals carefully tracked this tradition from pre-colonial English laws "prohibiting 'riding or going armed, with dangerous or unusual weapons [to] terrify[ ] the good people of the land," to dirk and Bowie knife prohibitions of the 19th century, all the way to the 20th century National Firearms Act prohibitions on machine guns. Pet.App. 52a-61a. Acknowledging that these laws did not provide an "historical twin" for the challenged restrictions, the court of appeals still found Respondents had met their burden "at this preliminary stage" to show "relevantly similar" analogues exist. Pet.App. 36a.

The court of appeals buttressed that conclusion with the "nuanced" approach *Bruen* requires for regulations addressing both dramatic technological changes and unprecedented societal concerns. It found "no evidence before the twentieth century that any firearms could be used to carry out mass shootings" because they simply lacked the capacity to do so, and that mass shootings are a societal concern unimaginable at the Founding. Pet.App. 38a. This conclusion is unsurprising given Petitioners' concession that the "prevalent firearms" at the Founding and Reconstruction eras were "technologically distinguishable" from modern AR-15 style rifles. While flintlock muzzle-loaders "held just one round at a time (and often had to be pre-loaded); had a maximum accurate range of 55 yards; had a muzzle velocity of roughly 1,000 feet per second; required at least thirty seconds for the

shooter to manually reload a single shot; and were frequently liable to misfire," modern AR-15s and other assault weapons are "dramatically and reliably lethal." Pet.App. 41a-42a. And there was similarly "no direct historical precedent for the contemporary, growing societal concern over and fear of mass shootings resulting in ten or more fatalities." Pet.App. 42a.

Petitioners respond that the court of appeals' historical review amounts to "interest balancing" that is "practically identical" to pre-*Bruen* intermediate scrutiny review. Pet. 23-24. This is a distortion of the court's ruling. Petitioners' issue is not with interest balancing. In reality, Petitioners take issue with the court's consideration of the "why" part of the *Bruen* analysis. The court considered dangerousness of the restricted weapons when it answered—as instructed by this Court—*why* Connecticut enacted the restrictions in the first place and *how* they work. It did not consider whether the "*why*" of these laws amounts to a "substantial state interest" or consider any relationship between the justification for the law and the interests it served. *New York State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 264 (2d Cir. 2015). The court instead followed this Court's direction to examine the "reasons" for the law and compare those to historical analogues—which it did, properly. *United States v. Rahimi*, 602 U.S. 680, 711 (2024) (Gorsuch, J., concurring). Petitioner's arguments would erase the "why" of the *Bruen* analysis and eliminate any consideration of a State's reasoning for enacting any firearm laws. That is not what *Bruen*, *Heller*, and *Rahimi* require and to dismiss that as impermissible

"interest balancing" would make the application of this Court's test practically impossible.

Petitioners' primary argument fares no better. They claim the court of appeals could not engage in any of the historical analysis *Bruen* requires because, as a matter of law, a firearm cannot be "dangerous and unusual" if it is "in common use for lawful purposes". Conducting a thorough historical analysis and relying on the Respondents' unopposed historical expert testimony, the court of appeals rejected Petitioners' conjunctive reading of "dangerous and unusual". Pet.App. 31a. Given the unopposed historical evidence, the court determined that Petitioners' argument "strips coherence from the historical limitation to the Second Amendment right applicable to dangerous and unusual weapons." *Id.* at 32a.

The court of appeals was similarly correct to reject Petitioners' argument that the applicable test is confined to one inquiry only: whether a weapon is in common use for lawful purposes. It explained that *Bruen* and *Heller* "do not hold that the Second Amendment *necessarily* protects *all* weapons in common use." Pet.App. 30a (emphasis in original). Rather, this Court held that "the Second Amendment protects *only* the carrying of weapons that are those 'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" *Bruen*, 597 U.S. at 47 (emphasis added) (quoting *Heller*, 554 U.S. at 627). Put differently, weapons that are *not* in common use can safely be said to be *outside* the ambit of the Second Amendment. But the reverse does not necessarily

follow. If a weapon happens to be in common use, it does not guarantee that it cannot be banned, and this Court has never held otherwise.

To the contrary, *Heller's* focus on handguns as the "quintessential self-defense weapon" makes clear that "common use for lawful purposes" means far more than simple numerosity. 554 U.S. at 629. It emphasized that handguns are "the most preferred firearm in the nation to 'keep' *and use* for protection of one's home and family." *Id.* at 628-29 (emphasis added). And it described in detail *why* Americans prefer handguns for that purpose, including their ease of access and operation in confrontations compared to long guns (like AR-15s). *Heller*, 554 U.S. at 628-29. So under *Heller*, "common use" necessarily requires an analysis of a weapon's actual use and functionality for self-defense—not its popularity in the abstract.

Any other reading would "totally detach[] the Second Amendment's right to keep and bear arms from its purpose of individual self-defense." *Bianchi*, 111 F.4th at 460. But *Bruen* reinforced that "individual self-defense is the *central component* of the Second Amendment right," and that "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are *central* considerations" in the analysis. *Bruen*, 597 U.S. at 29 (citations and quotation marks omitted; emphasis in original). Any assessment of whether a firearm ban's "burden on the right of armed self-defense" is comparable to its historical analogues necessarily requires an inquiry into whether the firearm is used or useful for self-defense

in the first place. The uncontested record here shows that assault weapons and LCMs are neither.

CONCLUSION

The petition for writ of certiorari should be denied.

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